Central Vermont Public Service Corporation
Legal Department
77 Grove Street
Rutland, Vermont 05701

Kenneth C. Picton, Esq.
Assistant General Counsel

Phone: (802) 747-5372
Fax: (802) 747-2189
kpicton@cvps.com

July 17, 2009

Ms. Susan M. Hudson, Clerk
Public Service Board
Chittenden Bank Building, 4th Floor
112 State Street
Post Office Drawer 20
Montpelier, VT 05620-2701

Re: PSB Docket No. 7440 Petition of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., for amendment to their Certificates of Public Good and other approvals required under 10 V.S.A. §§ 6501-6504 and 30 V.S.A. §§ 231(a), 248 & 254, for authority to continue after March 21, 2012, operation of the Vermont Yankee Nuclear Power State, including the storage of spent-nuclear fuel

Dear Ms. Hudson,

Enclosed please find one original and six copies of Central Vermont Public Service Corporation's Initial Brief in the above matter.

Thank you, and please contact me with any questions.

Sincerely,

Kenneth C. Picton
KCP/k
enc.
cc: Service List

STATE OF VERMONT
PUBLIC SERVICE BOARD

Petition of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., for amendment of their Certificates of Public Good and other approvals required under 10 V.S.A. §§ 6501-6504 and 30 V.S.A. §§ 231(a), 248 & 254, for authority to continue after March 21, 2012, operation of the Vermont Yankee Nuclear Power Station, including the storage of spent-nuclear fuel	)	Docket No. 7440

CENTRAL VERMONT PUBLIC SERVICE CORPORATION
BRIEF AND
PROPOSED FINDINGS

July 17, 2009

Kenneth C. Picton, Esq.
Central Vermont Public Service Corporation
77 Grove Street
Rutland, VT 05701
Phone: (802) 747-5372
kpicton@cvps.com

TABLE OF CONTENTS

I. Introduction

Through this Brief and Proposed Findings, Central Vermont Public Service Corporation ("Central Vermont," "CVPS" or the "Company") respectfully requests that the Vermont Public Service Board (the "Board" or "PSB"):

(i) issue an interim decision, memorandum or advice ("Interim Decision") providing guidance to the parties and the Vermont Legislature;

(ii) in such Interim Decision, advise whether, based on the evidence available to the Board at the time of such Interim Decision, Entergy Nuclear Vermont Yankee, LLC ("ENVY") and Entergy Nuclear Operations, Inc. ("ENO" where necessary, and otherwise collectively with ENVY, "ENVY") have met their burden to show significant economic benefit satisfying the criteria of economic benefit to the State and promoting the general good of the State;

(iii) find that any "excess revenues" to which CVPS and Green Mountain Power Corporation ("GMP") are entitled under paragraph 4 ("Revenue Sharing Clause," "Revenue Sharing Agreement," "RSC," or "RSA") of the Docket No. 6545 Memorandum of Understanding ("Dkt. 6545 MOU"), are for the benefit CVPS's and GMP's customers, unless the Board affirmatively finds a different allocation for the benefit of other Vermont utilities' customers is just and reasonable; and

(iv) deny the request of the Vermont Electric Cooperative, Inc. ("VEC") to receive any portion of excess revenues through entitlement or right.

II. The Board should issue an Interim Decision

CVPS supports and adopts the legal arguments and conclusions presented in GMP's Initial Brief which support that the Board may issue an Interim Decision. CVPS provides the following Proposed Findings in support of its request that the Board issue an Interim Decision.

Proposed Findings

1. The existing purchase from ENVY represents a very large portion of CVPS's portfolio – almost 1/3 of CVPS's capacity requirement and more than 40 % of its energy supplies. Given this magnitude and the ongoing uncertainty as to when and whether VY will be relicensed, there is no fully effective way to insulate CVPS's planning for the post-relicensing portfolio. Deehan pf. of 2/11/09 at 7.

2. CVPS expects that the expiration of the existing power purchase agreement ("PPA") in March of 2012 will create a gap of about 150 mW in CVPS's power supply. While CVPS does not plan to purchase this full amount from ENVY, it nonetheless takes time to line-up and execute transactions approaching this magnitude. The uncertainty around whether the Vermont Yankee plat ("Vermont Yankee," "VY" or the "plant") will continue to operate and whether there will be a new PPA has translated into both real and opportunity costs to CVPS's consumers. Delay has potentially adverse effects and all parties should work to minimize both delay and its side-effects. Deehan pf. of 2/11/09 at 7.

3. CVPS went to the market in 2008 in order to begin the process of diversifying the supplies in its long-term portfolio. CVPS has done that with a request for proposals and expects to execute purchases for up to 40 mW. CVPS is reluctant to commit to more than that because of the potential that an attractive PPA with ENVY could subsequently make a greater amount too large. Deehan pf. of 2/11/09 at 7.

4. On the other hand, if no ENVY PPA is ultimately reached, taking a pass on amounts beyond 40 mW in this market solicitation may result in the loss of a valuable opportunity to consumers. Deehan pf. of 2/11/09 at 7.

5. CVPS and GMP also issued a second "Contingent RFP" in an effort to identify power suppliers that would be willing to work with CVPS and GMP during this period of ongoing uncertainty. CVPS's intention is to buy up to an additional 100 mW contingent on the outcome with ENVY. CVPS and GMP took this action in direct response to not having reached agreement on a new PPA with ENVY and in response to the uncertainty with the plant's ongoing status. Deehan pf. of 2/11/09 at 8.

6. There is no danger that CVPS physically will not have enough power to serve consumer load due to this uncertainty, but it may contribute to a greater use of shorter term purchases that serve to get CVPS to a time when CVPS is able to find other desirable, feasible, longer-term replacement power. Delay effectively leaves fewer feasible options in the time left before 2012 and reduces the regulatory review and approval window as CVPS works to replace about 1/3 of its existing power portfolio. Deehan pf. of 2/11/09 at 8 (emphasis in original).

7. Uncertainty over the ongoing status of the plant, even if ultimately relicensed, could lead to effects on ENVY's preparations and affect the availability of the plant in 2011 while the existing PPA is still in effect at what is highly likely to be a below market price of $44/mWh. All of these things result from delay in reaching closure on both the relicensing and a new PPA and can have cost implications for Vermont consumers. Deehan pf. of 2/11/09 at 8.

Discussion

There is little risk that if Vermont Yankee is not relicensed, Vermont will not have sufficient power available to serve the needs of customers. Finding 6, above. The question is

what the terms of acquiring such power will be (whether from ENVY or other sources), and guidance from the Board would be valuable in enabling the Vermont utilities to achieve more favorable terms than may be available at later decision points. *See,* Findings 3-5, above. Issuing an Interim Decision will therefore assist Vermont utilities as they make resource decisions.

Without an Interim Decision, CVPS may be required to delay making important resource decisions until both the Legislature and Board make their independent decisions regarding the relicensing of Vermont Yankee. A favorable Interim Decision could influence a Legislative outcome and would make it more likely that Vermont Yankee may be relicensed. A generally favorable Interim Decision, but one that provides that ENVY has not met its burden to satisfy the economic benefit to and promoting general good of the State, will provide assistance in negotiating a favorable PPA with ENVY; if one is negotiated, such Interim Decision could influence a Legislative outcome and would make it more likely that Vermont Yankee may be relicensed.

An unfavorable Interim Decision, with little prospect that a PPA would resolve the issues, could also influence a Legislative outcome and would make it far less likely that the plant will be relicensed, and CVPS and the other Vermont utilities could act accordingly.

III. In such Interim Decision, the Board should advise whether ENVY has met its burden to satisfy the criteria of economic benefit to the State and promoting the general good of the State.

A. ENVY's burden to satisfy the economic benefit to and promoting general good of the State *could* be met without a PPA

Proposed Findings

8. Central Vermont believes that the plant should be re-licensed, provided that the balance of the evidence demonstrates that the plant will operate safely and reliably, and that it

will provide sufficient economic value to the public interest over the new term. Deehan pf. of 2/11/09 at 10.

9. CVPS does not recommend that a new PPA literally be considered a requirement. This is because it is plausible that the Board could find enough other economic value in the continued operation of the plant to determine that a new Certificate of Public Good ("CPG") is warranted without a PPA. Deehan pf. of 2/11/09 at 4 (emphasis in original).

10. Ongoing VY station safety and reliability have to be absolute prerequisites into the CPG process. Without satisfactory results on these fundamentals, there is no purpose in considering the RSC, a PPA, tax payments, jobs or income multiplier effects. Deehan pf. of 2/11/09 at 9.

Discussion

30 V.S.A. § 248(b)(3) requires that the Board find that relicensing of Vermont Yankee "will not effect system stability and reliability." In addition, plant reliability also relates to economic benefit criteria under § 248(b)(3). *See*, Docket No. 6812, Order of 3/15/2005, at 24. It is completely appropriate for the Board to review safety and reliability concerns as part of its instant consideration. Although direct safety issues are subject to the jurisdiction of the Nuclear Regulatory Commission, the Board is not preempted from assessing safety concerns as part of its overall consideration of need, cost, economic impacts, and other areas review under § 248.

As the Board held in Docket No. 6545:

> "In *Pacific Gas and Electric Co. v. State Energy Resources Conservation & Development Commission* ("PG&E"), the U.S. Supreme Court held that the Atomic Energy Act[1] preempts state jurisdiction as to the "radiological safety aspects involved in the construction or operation of a nuclear plant . . ." but also that "States retain their traditional responsibility in the field of regulating electrical utilities for determining

[1] Atomic Energy Act of 1954, §§ 1–320, 274(k), as amended, 42 U.S.C.A. §§ 2011–2286i, 2021(k).

questions of need, reliability, cost and other related state concerns."[2] The Court explained, however, that even when a statute, such as the Atomic Energy Act, does not expressly preempt state authority, a scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for states to supplement it.[3] Upon review of the Atomic Energy Act and its Legislative history, the Court concluded that the federal government occupies the entire field of nuclear-safety concerns, although it does not displace states' traditional authority over "the need for additional generating capacity, the type of generating facilities to be licensed, land use, rate-making, and the like."[4] The Court also indicated that state regulation is preempted where it actually conflicts with federal law, *i.e.*, in a case where compliance with both federal and state regulations is an impossibility, or when state regulations serve as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.[5]
Docket No. 6545, Order of 6/13/2002 at 118, 119 (original footnote numbers revised in this Brief).
As the Board also provided in the sale docket, "the safety of the [Vermont Yankee] nuclear generating station is a matter of great concern to the citizens of Vermont and to this

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2 *Pacific Gas and Electric Co. v. State Energy Resources Conservation & Development Commission*, 461 U.S. at 205 (1983). Although *PG&E* considered the preemptive effect of Section 274 of the Atomic Energy Act, the Supreme Court interpreted Section 274(k) as a reflection of the general distinction between federal and state authority to regulate activities covered by the Atomic Energy Act, as amended.

3 *Id.* at 204. Congress can preempt state authority through either express terms of legislation or by enactment of a scheme of federal regulation that is "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it," or where an Act of Congress "touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Id.* citing *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

4 *Id.* at 212–13. *PG&E* involved a California statute that imposed a moratorium on the construction of nuclear plants until a state administrative board "finds that there has been developed and the United States through its authorized agency has approved and there exists a demonstrated technology or means for the disposal of high level nuclear waste." *Id.* at 198. Upon a challenge by utility companies that, among other things, the state of California was preempted by the federal statutory scheme, the Court held first that the federal government has occupied the entire field of nuclear safety concerns, but also that the California statute was based on economic considerations, and thus fell within the broad responsibilities traditionally held by the states in the field of public utility regulation. *Id.* at 206.

5 *PG&E*, *supra*, at 204. There was no inherent conflict between a Nuclear Regulatory Commission decision that a plant's operation was safe and California's decision that its operation might not be economically wise, *id.* at 218–19. *See Kerr-McGee v. City of West Chicago*, Nuclear Reg. Rep. P 20,515, 59 USLW 2243, 32 ERC 1095, 20 Envtl. L. Rep. 21,369 (1990). In Kerr-McGee, the U.S. Court of Appeals for the Seventh Circuit held, among other things, that the Atomic Energy Act did not preempt West Chicago's application of its erosion and sedimentation regulations to Kerr-McGee's on-site nuclear waste disposal project. Even though erosion and sedimentation are mentioned in the federal regulations, the city's regulations did not directly interfere with the regulation of radiological hazards.

Board. ... As part of this broad investigation, we must consider the effects, if any, of the proposed transfer on health and safety." Docket No. 6545, Order of 6/13/2002 at 125. Finally, the Board has found that reliability is integrally related to economic benefit.

> As part of our evaluation of whether the uprate provides an economic benefit to the state of Vermont, the question the Board must consider is how much of a cost, if any, future outages may cause Vermont ratepayers. This requires us to consider the likelihood of outages, the magnitude of the financial risk, and the adequacy of Entergy's proposed mechanisms to protect Vermont ratepayers."
> Docket No. 6812, Order entered 3/15/2004 at 43.

These holdings are no less applicable to the extension of the license as they were to the transfer of the plant to ENVY or the subsequent uprate.

While CVPS does not have the burden to demonstrate that ENVY's proposals satisfy the safety and reliability concerns of the Board, CVPS believes that, unless the Board is satisfied that the plant can operate safely, and with reasonable reliability, over the license extension term, Envy's proposal should be rejected.[6] To CVPS, no other attributes or benefits from license extension outweigh this burden and if this burden is not met, the Board's consideration can end.

On the other hand, if the Board *is* satisfied that the plant can operate safely, and with reasonable reliability, over the license extension term, then the Board should consider the other requirements of § 248, especially economic benefit and other factors supporting the public good, and make a determination whether ENVY's petition should be approved.

B. A PPA would provide substantial support for ENVY's burden to satisfy the economic benefit to and promoting general good of the State

Proposed Findings

11. ENVY believes it is not necessary or reasonable for the Board to condition the CPG on the realization of additional benefits, and it would be risky to do so. ENVY asserts

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[6] "Reasonable" reliability is required, rather than "absolute" reliability. *See* Docket No. 6812, Order entered 3/15/2005 at p. 24, fn. 48: "The Vermont Supreme Court has concluded that a finding of 'absolute' reliability is not necessary under this statute. Instead, the Board need only find that there will be no 'adverse effect on the reliability of the system.' *See In re Petition of Twenty-Four Vermont Utilities*, 159 Vt. 339 (1992)."

Vermonters have a lot to lose if VY does not continue to operate. Tr. 5/20/2009 at p. 61, l. 23 – p. 52, l. 2 (Thayer); Exh. DPS-DL-1.

12. ENVY is willing to enter power agreement with Vermont utilities for some amount of power from the plant going into the future, but it needs to be at market rates. Tr. 5/21/2009 at p. 66, l. 24 – p. 67, l. 5 (Thayer). ENVY believes the Board should not require purchase power agreement with incremental value as a condition of relicensing the plant. Tr. 5/20/2009 at p. 57, ll. 1-8 (Thayer); Exh. DPS-DL-1.

13. CVPS is hopeful that a new PPA will be negotiated that is attractive to both ENVY and Vermont utilities. With the relatively stable cost structure of a nuclear plant and Vermont's preference for stable pricing and long-term sources, there would seem to be an opportunity to agree on a PPA that both sides see as attractive and which contributes to building sufficient value for the Board to find that continued operation of VY is in the public interest, and which provides economic benefit to ENVY to encourage their continued safe and reliable operation of the plant. A PPA could provide consumers with a stably-priced source of low emission power that, before the fact, represents a reasonable and attractive cost over a term that could extend to 2032. Deehan pf. of 2/11/09 at 4 (emphasis in original).

14. There are implications for CVPS's efforts to replenish its long-term power supply from not yet having reached agreement on a new PPA, and there will there be ramifications if Vermont's decision on a new CPG for the plant is delayed to 2010. Deehan pf. of 2/11/09 at 6, 7. *See, also,* Findings 2-6.

15. CVPS and GMP began a confidential negotiation process about 2 years ago with representatives of ENVY. CVPS and GMP have met quite regularly during this time, as have

had a very full exchange of perspectives and potential approaches. CVPS and GMP have been unable to reach agreement but continue to pursue that goal. Deehan pf. of 2/11/09 at 1, 2.

16. There are benefits beyond a power purchase agreement that come to Vermont by having such a significant large employer with highly technical staff and very good paying jobs, and very good tax paying residents of the State of Vermont. However, Vermont Yankee is a nuclear plant. It is being hosted in the State of Vermont. In the recent past, it has provided a significant, stable, low-cost source of power for Vermont and that has great value. GMP believes that as a part of the relicensing, it should continue to provide that kind of value to Vermonters. A power purchase agreement is very much connected to what the plant has provided for customers historically, and we believe that sort of relationship should continue into the future. Tr. 6/1/09 at p. 26, l. 19 – p. 27, l. 14 (Powell).

17. GMP would certainly be very pleased if there was continued Public Service Board support for a meaningful Power Purchase Agreement with the Vermont utilities. Tr. 6/1/09 at p. 28, LL. 8-17 (Powell).

18. There is no particular value to Vermont arising from the cost attributes of Vermont Yankee after relicensing, under the current structure. Since there is no PPA we do not yet know the value for Vermonters. Tr. 6/1/09 at p. 29, l. 5 – p. 30, l. 4 (Powell).

19. A new PPA with ENVY would have both positive and negative attributes in this context. In effect, while Vermont Yankee proved to be the most divisive source of power in the opinion of Vermonters, a reasonably attractive, stably priced long-term PPA could be a valuable addition to the future portfolio. Deehan pf. of 2/11/09 at 9.

Discussion

To satisfy the criterion of 30 V.S.A. § 248(b)(4), the Board must find that the relicensing as proposed by ENVY (or as the Board may condition any approval) "will result in an economic benefit to the state and its residents." As the Board has held, "the law does not set out how much economic benefit there should be, but rather simply directs that there be an economic benefit." Docket No. 6812, Order entered 2/15/2004 at 25.

Accordingly, § 248(b)(4) provides no "bright line" or "benefit/burden scale" for the Board to weigh the evidence or for ENVY objectively to fulfill. Rather, "Vermont law mandates that [the PSB] weigh this evidence, consider the public comments, and determine whether the sale promotes the general good of the state." Docket No. 6545, Order entered 6/13/2002 at p. 7.

In this process, the Board compares the various choices and determines which is most likely to provide the economic benefit necessary to satisfy § 248(b)(4). The comparison of choices here is quite similar to the exercise the Board undertook in Docket No. 6545:

> [The PSB has] tested the economic effects of the proposal over a range of possible scenarios, including the following:
>
> - Likely changes in the prices of power on the wholesale markets;
> - Changes in operating expenses, including contributions to the fund to pay for eventual decommissioning;
> - Increase in power production resulting from a potential power "up-rate" at Vermont Yankee;
> - The possible extension of Vermont Yankee's operating license beyond 2012;
> - Increased costs to address security needs; and
> - The effects of a major outage at Vermont Yankee due to equipment failure or sabotage.
>
> The economic analyses presented by the parties show that under almost all scenarios (including the most likely ones), Vermont ratepayers will benefit from the transfer of ownership to ENVY.

Docket No. 6545, Order entered 6/13/2009 at p. 8.[7]

This instant petition for relicensing requires the same balancing of benefits and costs. Because there is no clear quantification of benefits necessary to satisfy § 248(b)(4), CVPS believes the Board should not establish a "bright line" condition precedent that satisfaction of § 248(b)(4) requires a "meaningful" PPA.

It is possible that ENVY can provide sufficient value to Vermont that would satisfy the § 248(b)(4) criteria without a PPA; this burden is clearly ENVY's. For example, if a forecasted value of the RSC benefits was liquidated into some fixed value (*e.g.*, a payment of $XX millions over ten years), the Board might find that this value is sufficient to satisfy § 248(b)(4) absent a PPA.

CVPS is *not* arguing that ENVY *can* satisfy its burden without a meaningful PPA. It may very well be that ENVY *cannot* satisfy § 248(b)(4) without a meaningful PPA, but CVPS

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[7] In Docket No. 6812, Order entered 3/15/2009 at pp. 63-65 (emphasis in original), the Board expressly included a section entitled "Weighing of Benefits and Costs." In that section, the Board stated:

> "[W]e analyzed the benefits and costs of the proposed uprate. Briefly, we find the following economic benefits from the proposed uprate (expressed in net present value terms).
>
> (*Table omitted*)
>
> Weighed against these benefits are the following costs (expressed in net present value terms).
>
> (*Table omitted*)
>
> These tables demonstrate the significant uncertainties about the expected net economic value of the proposal before us. The most noteworthy of these relate to the financial risks associated with additional outages and the possibility that Vermont Yankee will more quickly exhaust its spent fuel storage capacity in the future due to the uprate. The question of whether the uprate provides an economic benefit to the state of Vermont depends in large part upon how we quantify these significant risk factors, which arise directly from the uprate. It also depends upon the assumption that the payments from Entergy arising from the Memorandum of Understanding will occur in the amounts predicted by Entergy and the Department. The incremental economic benefits that the uprate is expected to produce, which we estimate to be approximately $7.7 million, are likely to be achieved **if** few prolonged outages or power reductions occur, but could be offset by economic costs of (1) prolonged outages at times of high market power costs, (2) Entergy's failure to have adequate storage space, or (3) affiliate sales at below market prices that reduce the level of payments to the state.

believes that conclusion should arise *after* the Board has weighed the other benefits and costs, not *before*.

If ENVY is able to provide a PPA prior to closing of the record, the Board can examine any additional benefits that PPA provides. In the event ENVY does not provide such a PPA, or if the Board determines, based on all the evidence before it at the time, that a meaningful PPA *is* required to satisfy § 248(b)(4), this conclusion could be made in the Interim Decision discussed earlier; the Interim Decision would then provide an opportunity for ENVY to cure the deficiency (or choose not to).

CVPS believes, as does GMP, that "[a] power purchase agreement is very much connected to what the plant has provided for customers historically, and we believe that sort of relationship should continue into the future." Finding 16. We also believe that a PPA "could provide consumers with a stably-priced source of low emission power that, before the fact, represents a reasonable and attractive cost over a term that could extend to 2032." Finding 13. Like GMP, CVPS "would certainly be very pleased if there was continued Public Service Board support for a meaningful Power Purchase Agreement with the Vermont utilities." Finding 17.

CVPS simply believes that under § 248 and the Board's statutory duty and practice, the *absence* of a PPA, by itself, *automatically* results in a foreordained conclusion that § 248(b)(4) cannot be satisfied. However, to be clear and notwithstanding our less prescriptive view of the *requirement* for a PPA, CVPS believes that given the evidence of record to date, and without a meaningful PPA or some other material enhancement, ENVY likely has *not* satisfied its burden under § 248(b)(4).

C. ENVY's proposal to "roll in" the value of the RSC into a PPA is problematic and may not provide sufficient support for ENVY's burden to satisfy the economic benefit to and promoting general good of the State

1. The value of such a "roll in" is difficult to determine

Proposed Findings

20. Paragraph four of Docket 6545 Memorandum of Understanding sets forth the details of what is commonly referred to as the revenue sharing agreement. Tr. 5/20/2009 at p. 11, ll. 3-7 (Wiggett).

21. The revenue sharing clause was intended in part to capture some of the value that Vermont Yankee's owners would obtain if they had not sold the station and the plant was successfully relicensed. Tr. 5/21/2009 at p. 46, ll. 16-20 (Thayer).

22. Mr. Thayer's letter of December 22, 2008, to the PSB, stated that in selling power to CVPS and GMP, ENVY is interested in rolling in a value, representing an estimate of the worth of the RSC, in the form of lower power prices than ENVY would otherwise agree to in a new PPA. Deehan pf. of 2/11/09 at 2; Exh. DPS-DL-1.

23. ENVY believes the value embedded in the revenue sharing clause in and of itself provides sufficient economic justification for the Board to issue a CPG even if the price for the sale of the output of the plant never exceeds $61/mWh and, therefore, the amount of excess revenues is zero. ENVY believes this because that would imply a low priced electricity market, and the outcome would be the same. Tr. 5/21/2009 at p. 45, ll. 3-7, 13-20 (Thayer).

24. In the best of all worlds, it would be best to have a revenue sharing clause that provides that insurance value and have a purchased power agreement as a valuable addition to a portfolio that improves the portfolio from what it otherwise would be. Tr. 6/2/2009 at p. 138, ll. 17-24 (Deehan).

25. ENVY's position is that the only way Vermont utilities will get a contract price below a market price during a license extension period would be through some form of application of the expected revenue sharing agreement value. Tr. 5/20/2009 at p. 53, l. 10 – p. 54, l.1 (Thayer). However, Entergy has not taken a position that basically says 'we're not going to be spending more than what this revenue sharing number is.' Tr. 5/21/2009 at p. 113, ll. 4-7 and p. 114, ll. 4, 5 (Thayer).

26. ENVY's letter to the PSB focused on Department of Public Service ("Department" or "DPS") witness' Mr. Thomas's expected case scenario that estimates close to a billion dollars in economic benefit for Vermont ratepayers. This nearly one billion dollars in expected value to Vermonters is a benefit that will only be realized if VY continues to operate. Tr. 5/20/2009 at p. 57, l7 – p.58, l. 6 (Thayer); Exh. DPS-DL-1.

27. ENVY's current estimate of the value of the revenue sharing to Vermont under current market prices over 10 years is derived from Mr. Wiggett's valuation and ranges from approximately 230 million dollars on the low end to a high value of 693 million dollars. Tr. 5/21/2009 at p. 109, ll. 13-22 Thayer).

28. ENVY would be willing to take the expected revenue stream from the revenue sharing agreement and somehow monetize it and incorporate that into a contract with Vermont utilities to produce a below market power price. Tr. 5/20/2009 at p. 58, ll. 10-15 (Thayer).

29. Neither ENVY nor any affiliate is proposing to guarantee a minimum amount of excess revenues irrespective of the sales price for the output of Vermont Yankee power. Tr. 5/21/2009 at p. 45, ll. 8-12 (Thayer).

30. According to ENVY, there are two options for Vermont's utilities: (1) leave the revenue sharing agreement intact and have the opportunity to purchase power from Vermont

Yankee at market based rates, and the chips just fall where they may; or (2) somehow calculate the expected revenue stream from the revenue sharing agreement, extinguish the revenue sharing agreement, and then apply that calculated amount to a power contract to produce rates that are some increment below market pricing. Tr. 5/20/2009 at p. 55, l. 14 - p. 56, l. 6 (Thayer).

31. ENVY's suggestion to extinguish the RSC and replace it with a new "below-market PPA" is certainly is an alternative. Such an approach is inherently more complex than just negotiating a PPA or an effort to separately revise the RSC. Deehan pf. of 2/11/09 at 6.

32. For Central Vermont, the key issues are whether the RSC, originally negotiated by the Department, is "extinguished ... and replaced... with new below-market PPAs" (Exh. DPS-DL-1) and, if so, what conversion of value would be acceptable to the State. Deehan pf. of 2/11/09 at 2. CVPS has no indication that the State's regulators or legislators want to replace the RSC and CVPS is reluctant to just presume that the State's regulators or legislators do. Deehan pf. of 2/11/09 at 6.

33. If increased certainty in the benefits for consumers is a point needed for the regulatory approval of a CPG, CVPS would not oppose that and would work to facilitate a solution with the other parties. Deehan pf. of 2/11/09 at 15.

34. CVPS suggests that the State might instead prefer to retain the attributes of the RSC (in either its current form or some other mutually acceptable revision), while separately considering a power purchase for its separate attributes, or to establish minimum goals that would have to be achieved in the blended approach. Deehan pf. of 2/11/09 at 2.

35. If CVPS were to be in a situation where there were proposals that involve extinguishing the RSA, CVPS believes the Department would have to be comfortable with the

values that are associated with that and the changes in risk associated with that. Tr. 6/2/2009 at p. 100, l. 8 – p. 101, l. 20 (Deehan).

36. There is no known "below-market value" because there is in fact no observable market in 2012 to 2032 power against which to make such a comparison. Deehan pf. of 2/11/09 at 3. Since there is no transparent market for 2012 to 2032 power, determining what PPA price path will actually prove to be "below market," as Mr. Thayer's letter states, becomes problematic and represents a potential risk of having "given up" the RSC. In other words, before the fact, Vermont utilities would not be assured that any such contract price path will be less costly than purchasing from the shorter-term market that subsequently unfolds and Vermont consumers would no longer have the insurance value offered by the RSC. Deehan pf. of 2/11/09 at 6.

37. The market price (as of the June 2009 hearings) is below the 2012 $61/mWh strike price referenced in paragraph 4 of the Dkt. 6545 MOU. CVPS is experiencing prices between $40 and $45/mWh for energy; capacity would probably add another $5/mWh. The forward markets do extend out to 2012, and in 2012 the forward price is just over $61/mWh, and between $60/mWh and $70/mWh for quite a while. Tr. 6/2/2009 at p. 99, l. 16 – p. 100, l. 4 (Deehan).

38. The only way a "below market" price could be assured is if the long-term seller is willing to commit to a stated discount to some transparent series of shorter-term market prices in the future. However, it is unlikely any seller would see such a sale as attractive compared to just disposing of its output at shorter-term prices as they materialize in the future. Deehan pf. of 2/11/09 at 6, fn. 2.

39. If there is a new ENVY PPA, CVPS expects to evaluate like any other proposed PPA. Deehan pf. of 2/11/09 at 15. CVPS integrates the public input received in the State's

recent public outreach process with traditional system planning criteria and portfolio economics in evaluating financially feasible, potential new power supplies. Overall, 60% of the weight is on portfolio mean-variance economic analysis and 40% is on the other attributes. Deehan pf. of 2/11/09 at 8, 9; Exh. CVPS WJD-2.

40. CVPS evaluates all potential long-term power sources, including ENVY, using the same fundamental criterion: is the power likely to be an attractive addition when our portfolio is considered in total? In the most general sense, if there is not unique value in a proposal, relative to other alternatives, CVPS does not make a long-term commitment. Deehan pf. of 2/11/09 at 3.

41. CVPS can always buy shorter-term power at market-determined prices so, by not making long-term commitments to sources that represent no unique portfolio value, CVPS preserves the opportunity to find other sources that do. Deehan pf. of 2/11/09 at 3.

Discussion

As discussed in Section III(B), above, ENVY has the burden of satisfying the requirements of § 248(b)(4) by providing sufficient net benefits. Even with the prospective benefits of the RSC, whether in real dollars or in insurance value, satisfying this burden may or may not require a meaningful PPA. To the extent the benefits of the RSC are reduced or eliminated by "rolling-in" such value into a PPA, the requirements for a "meaningful" PPA increase. Where a marginally "below market" PPA *might* have provided the necessary value incremental to the RSC to satisfy § 248(b)(4), that PPA value, by definition, must increase if the RSC is reduced. CVPS views the ENVY proposal for "rolling in" as essentially a "zero-sum" game for ENVY: The necessity to satisfy the requirements of § 248(b)(4) remains with ENVY -- to the extent ENVY seeks or proposes to interchange or fix values, through the RSC and/or PPA

and/or other value adjustments, ENVY still must provide sufficient benefits to meet the statutory requirements.

2. Any "roll in" or other reduction in RSC benefits must hold CVPS, GMP, VYNPC and ratepayers harmless

Proposed Findings

42. ENVY is interested in rolling in a value, representing an estimate of the worth of the RSC, in the form of lower power prices than ENVY would otherwise agree to in a new PPA. *See*, Findings 22-25, above.

43. There is a significant risk of expensive, time-consuming litigation over this sharing issue. CVPS believes that should a decision, an alternative RSC, a PPA, or some other agreement result in the non-Vermont Sponsor/power purchasers being excluded from sharing in the excess revenues, those parties would likely commence litigation against any or all of Vermont Yankee Nuclear Power Corporation ("VYNPC"), CVPS, GMP, the regulators, and/or any other parties they felt were responsible for that result. Deehan pf. of 2/11/09 at 14. *See,* Findings 64, 65, below, discussing non-Vermont Sponsor/power purchasers.

44. Mr. Thayer's letter of December 22, 2008, to the Public Service Board, does not mention any provision to protect CVPS, GMP and VYNPC from claims by non-Vermont Sponsor/power purchasers. Exh. DPS-DL-1.

Discussion

In the event the RSC is "rolled into" a PPA or is otherwise terminated, CVPS, GMP and VYNPC will most likely be sued by the non-Vermont Sponsor/power purchasers. Litigation in courts, before FERC, or both, will be burdensome, and if CVPS, GMP and/or VYNPC are found liable, damages could be commensurate with the estimated value of the RSC to the non-Vermont Sponsor/power purchasers. Ultimately, any such damages paid to non-Vermont Sponsor/power

purchasers (and VYNPC's litigation costs) would ultimately be included in CVPS's or GMP's costs of service, either raising rates or being unrecovered; either result would impose a significant hardship on ratepayers or the utilities.

ENVY, while suggesting an end to the RSC, has not proposed to the Board to indemnify or hold harmless CVPS, GMP, VYNPC or ratepayers harmless from such result.

Since satisfying § 248(b)(4) requires a balancing of benefits and costs to determine the good of the state (*see,* Section III(B), Discussion at p. 12, above), the risks to CVPS, GMP and Vermont ratepayers would likely substantially offset any benefits of "rolling in" the RSC value into a PPA. Accordingly, CVPS recommends that any determination of whether ENVY has satisfied § 248(b)(4) should take into account whether and to what extent Vermont is protected from any such liabilities.

D. ENVY's position that the RSC provides sufficient value is problematic and may not provide support for ENVY's burden to satisfy the economic benefit to and promoting general good of the State

1. Inherent risk of little or no value in the RSC

Proposed Findings

45. Unless there was a properly structured PPA, that would allow a favorable purchase of power produced by Vermont Yankee or ENVY, there is no realistic chance, other than the RSC, for a direct benefit to ratepayers. Tr. 6/3/2009 at p. 150, l. 17 – p. 152, l. 2 (Lamont).

46. There are risks associated with the RSC. Deehan pf. of 2/11/09 at 10. However, on the other hand, the RSC has value acting as a hedge or insurance policy, at least in concept, against the possibility of high market price conditions between 2012 and 2022. Deehan pf. of 2/11/09 at 2.

47. At those times after March 2012 when CVPS's portfolio is being hit by very high market prices, the revenue sharing clause is going to yield its biggest payout, and as insurance it is good for consumers to have some bill relief at those times. Tr. 6/2/2009 at p. 117, ll. 11-16 (Deehan).

48. Market price uncertainty may be the most obvious risk to whether Vermont consumers will receive actual revenues from the RSC as a credit against the cost of service. The RSC's strike price is currently below the observable 2012 forward price (see, Finding 37, above), but it may or may not remain that way in the run up to 2012. After 2012, the indices that control the strike-price should be expected to escalate faster than overall inflation because of its partial weighting on labor costs. So, even if the initial PPA price begins "in-the-money" it may not remain there. Deehan pf. of 2/11/09 at 10.

49. CVPS believes the strike price will escalate a little faster than general inflation because the formula has a significant weight on labor, and labor historically does inflate faster than general inflation. In general, over the last 15 years, energy prices have escalated much more than general inflation. It is very difficult going forward to say whether or not that will continue. There certainly are forces at play that suggest it will and there are some forces at play that suggest it won't. Tr. 6/2/2009 at p. 130, l. 22 – p. 131, l. 10 (Deehan).

50. The value of the revenue sharing is a creature solely dependent on what the three factors that are set out in the MOU do to the strike price. Tr. 5/20/2009 at p. 29, ll. 8-12 (Wiggett). Payments are keyed to the plant's unit revenues (which may or may not align with market price) and would be shared among two, three or more utilities. The plant might not operate at times to produce such revenues. Deehan pf. of 2/11/09 at 5 (emphasis in original).

51. Even if market conditions produce high wholesale market power prices, it is not certain that the RSC would produce equivalent revenue credits for Vermont consumers. Deehan pf. of 2/11/09 at 10.

52. If Entergy were to enter a contract for power with a party outside Vermont, for a penny below the strike price, there would be no shared benefit from the sale of that power. Tr. 5/20/2009 at p. 15, ll. 18-23 (Wiggett).

53. As an insurance policy against low market prices, ENVY may decide to sell its future output to third parties at stable prices. In the industry, this would be called a "forward hedging program." Because of the largely fixed cost nature of a nuclear power plant, it would not be unusual for an owner to implement a forward hedging program; this is consistent with ENVY's observable past behavior with its merchant plant assets, including its willingness to enter a long-term PPA with VYNPC in 2002, when ENVY purchased the plant from VYNPC. Yet, from the perspective of CVPS and its customers, hedging would have the potential effect of missing temporary high price excursions or delaying and limiting revenue sharing. If this were to occur, the RSC could serve as a less valuable insurance policy for Vermont consumers against high market prices. Deehan pf. of 2/11/09 at 10, 11.

54. Since the RSC effectively draws off one half of the benefit of high prices but does nothing to protect ENVY from low market prices, Entergy/ Enexus may have the greatest incentive to hedge its sales from the plant relative to other assets in its portfolio. In addition, it is always possible that the plant's output could become involved in other sorts of multiparty transactions that might be rational overall for Entergy/ Enexus but which would nonetheless result in lower unit revenues for VY. Deehan pf. of 2/11/09 at 11.

55. ENVY agrees that if the plant is authorized to continue operating into the relicensing period and there will be power sales in excess of the strike price, ENVY would be under an obligation to share RSA money with VYNPC. Tr. 5/20/2009 at p. 55, ll. 2-10 (Thayer).

56. If "excess revenues" were defined to include only transactions in which there was a sale of the output to a purchaser that then paid directly to ENVY for that output, then it would be possible hypothetically to structure a transaction that reflected that substance but was more complex and fell outside that definition. Tr. 5/21/2009 at p. 38, l. 13 – p. 38, l. 8 (Thayer).

57. ENVY believes that the term excess revenues would includes a transaction in which ENVY sold to an affiliate at a below market price and that affiliate then turned around and sold to a third party at an above market price. Excess revenues would include the value received by that affiliate in that sale to a third party. Tr. 5/21/2009 at p. 41, ll. 16-23 (Thayer).[8]

58. ENVY believes that the term excess revenues includes not only funds that might be paid in response a sale of power from the station, but also other consideration directly attributable to that sale, and also applies to transactions in which the consideration was provided

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[8] This "affiliate sale" issue was directly addressed in the uprate case, Docket No. 6812, Order entered 3/15/2004 at pp. 69, 70.

> The primary economic benefit to the state from the uprate is the payments from Entergy pursuant to the Memorandum of Understanding. As we explained above, the payments from Entergy are based upon the price at which Entergy sells the uprate power and the strike price (which is the Department's price forecast minus $11/MWh). This benefit would be reduced, perhaps significantly, if Entergy sold the uprate power at prices below the market rates. Normally, Entergy would have no incentive to do so as the profit on the uprate power greatly exceeds the payments to the state under the Memorandum of Understanding. The possibility exists, however, that Entergy could sell the power to an affiliate at below market prices. The affiliate could then resell it at market rates, so that Entergy as a corporation received the expected profit. At the same time, the benefit to the state of Vermont would be lessened as the Memorandum of Understanding bases the payments upon the sale from Vermont Yankee.

In that case, Entergy agreed to a condition prohibiting sales to an affiliate for purposes of avoiding revenue sharing. *Id.* Here, ENVY has agreed to include in the excess revenue calculation *any* consideration received from a myriad of transactions, not just sales to affiliates.

by an entity other than the direct purchaser, but that consideration was directly attributable to the sale. Tr. 5/21/2009 at p. 39, l. 24 – p. 42, l. 10. (Thayer).

59. Because the term excess revenues includes these types of transactions, it is important to obtain all the data necessary to assure that excess revenues are appropriately calculated with respect to a specific transaction. The data necessary to verify an excess revenues calculation would include, for instance, the valuation of any consideration paid other than cash. Entergy and ENVY agree to provide the data necessary to verify this calculation. Tr. 5/21/2009 at p. 41, l. 11 – p. 43, l. 12 (Thayer); Exh. DPS DL-1 at ¶4 (MOU).

60. Disputes under the Dkt. 6545 MOU will be decided by the Public Service Board, including disputes relating to the calculation of excess revenues and to what consideration is included in excess revenues. Tr. 5/21/2009 at p. 43, ll. 17-25 (Thayer).

61. CVPS believes Mr. Thayer's live testimony provided assurances regarding the issue of multi-party transactions that might be rational overall for Entergy/Enexus, but which would nonetheless result in lower unit revenues for Vermont Yankee, that it is Entergy's intention to share value associated with the output of this plant however obtained, that Vermont would have access to the records of the company, and that if there is a dispute about the value, the Board would have authority over that dispute. Tr. 6/2/2009 at p. 104, ll. 5-15 (Deehan).

2. Vermont's share of RSC revenues is in doubt

Proposed Findings

62. There is uncertainty over whether the Vermont utilities will be entitled to 55% or 92.5% of the value paid by ENVY under the RSC. Deehan pf. of 2/11/09 at 11.

63. Presuming that the RSC is implemented as provided in Paragraph 4 of the MOU, and excess revenues occur, ENVY would pay to VYNPC the amounts to be shared through the

RSC. Finding 55, above. The question then arises: What does VYNPC do with those revenues? In the Board's Order approving the sale of the plant, the Board provided:

> It is important to note that the economic benefits of license extension are greatest if market prices rise above currently-projected levels. Through the MOU, ENVY has made some of these benefits available to *Vermont ratepayers*. In particular, Paragraph 4 provides that if Vermont Yankee's average energy price exceeds $61/MWh (adjusted for inflation beginning in 2013), ENVY will share 50 percent of the excess revenues with VYNPC *and its Sponsors*. This sharing mechanism captures some of the value that Vermont Yankee's *owners* would obtain if they had not sold the station and successfully relicensed.
>
> Order entered 6/13/02 in Docket No. 6545, at 72 (emphasis added).

Deehan pf. of 2/11/09 at 11, 12.

64. The answer to the question "What does VYNPC do with those revenues?" may have been simple in 2002: The "Sponsors" and the "owners" of VYNPC shared a unity of interest—it was the same group of utilities. Following the sale, most of the non-Vermont owners sold their equity ownership interests back to VYNPC. Deehan pf. of 2/11/09 at 12.

65. Prior to the sale by the non-Vermont owners, the ownership interests were:

Owner/Sponsor	Owner/Sponsorship Percentage
Central Vermont	35.0%
New England Power Company	22.5%
Green Mountain	20.0%
The Connecticut Light and Power Company	9.5%
Central Maine Power Company	4.0%
Public Service Company of New Hampshire	4.0%
Western Massachusetts Electric Company	2.5%
Cambridge Electric Light Company	2.5%

Deehan pf. of 2/11/09 at 12.

66. Also prior to the sale of the plant, each Sponsor/power purchaser was committed to purchase a share of the capacity and associated energy produced by Vermont Yankee equal to the Sponsor/power purchaser's ownership share through 2012, plus their share of VYNPC's operating costs, under a Power Contract approved by the Federal Energy Regulatory Commission ("FERC"). Deehan pf. of 2/11/09 at 12, 13.

67. In 2003, all of the non-Vermont owners, except Central Maine Power, sold their ownership interest in VYNPC. At that time, the "owners" became Central Maine Power Corporation ("CMP"), CVPS, and GMP, with 7.5%, 58.9 and 33.6% interests, respectively. Deehan pf. of 2/11/09 at 13.

69. The "Sponsor/power purchasers" (including all of the entities listed in the table in Finding 65, above) remained liable for purchasing their share of the power acquired by VYNPC from ENVY, through license expiration in 2012, and for paying their share of VYNPC's (now much lower) operating costs. Deehan pf. of 2/11/09 at 13.

70. The overall value of the revenue sharing agreement to Vermont varies depending on both on the percentage of the funds received as well as which customers of utilities would benefit. Tr. 5/20/2009 at p. 11, ll. 3-7 (Wiggett).

71. Using the Board's discussion in Docket No. 6545, Order entered 6/13/02 at 72, which referred to *Vermont ratepayers*, *Sponsors* and *owners*, CVPS posited four possible methods for VYNPC to distribute the excess revenues it receives from ENVY:

- If VYNPC should share the RSC revenues with all of the *Sponsors*, as a credit under the power purchase contract, then CVPS and GMP's (Vermont's) aggregate share of the revenues would be 55%.
- If VYNPC should share with all of the *pre-2003 owners*, as a dividend, Vermont's share would also be 55%.

- If VYNPC should share the RSC revenues with all of the *current owners*, as a dividend, then CVPS and GMP's (Vermont's) share of the revenues would be 92.5% (with the remaining 7.5% shared with CMP).

- If VYNPC should share *only with CVPS and GMP* (the intent of the RSC being to compensate *Vermont ratepayers* for hosting the plant), Vermont's share would be 100%.

Deehan pf. of 2/11/09 at 13, 14.

72. Mr. Wiggett, who was CFO of VYNPC at the time of the sale, does not know whether the RSC allocation from VYNPC would be based on ownership or sponsorship. Tr. 5/20/2009 at p. 18, ll. 11-14 (Wiggett).

73. CVPS is aware that most or all of non-Vermont owners that sold their ownership interests in 2003 appear to have an expectation that they should receive Sponsor/power purchasers' shares of the excess revenues received by VYNPC as a credit under the power purchase contract. Deehan pf. of 2/11/09 at 14. There is a significant risk of expensive, time-consuming litigation over this sharing issue. *See,* Findings 42-44 and Discussion in Section III(C)(2) at p. 20, above.

74. There is a question whether the RSA proceeds are distributed by VYNPC through the PPA's with purchasers (a FERC issue) or through the VYNPC corporate structure (a Vermont law issue). Tr. 6/2/2009 at p. 132, ll. 15-24 (Deehan).

75. The uncertainty regarding interpretation of the RSA does not arise solely from the language in the Docket No. 6545 Order, but also arises from the actions of parties subsequent to the order and uncertainties in the law. Clarification by the Board of what its intention was in 2002 could be a helpful thing, Tr. 6/2/2009 at p. 131, l. 17 – p. 132, l. 9 (Deehan).

76. The non-Vermont Sponsors were notified of this docket, and that the RSC would be an issue. On August 12, 2008, CVPS sent a letter to the current contacts (provided by

VYNPC) of all of the Sponsors/power purchasers informing them that (1) this docket had been opened, (2) the intervention period would expire on August 22, 2008, and (3) advising them that the interpretation of the MOU and excess revenue sharing mechanism had been raised in ENVY's initial testimony. Deehan pf. of 2/11/09 at 14, 15; Tr. 6/2/2009 at p. 144, ll. 10-17 (Deehan); Exh. CVPS WJD-3. The letter was copied to GMP, Central Maine Power, and VYNPC. Tr. 6/3/2009 at p. 6, l. 23 – p. 7, l. 24 (Picton); Exh. CVPS WJD-23.

77. The non-Vermont Sponsors did not intervene in this Docket. Docket No. 7440, Order entered 3/24/09 (listing all motions to intervene).

78. CVPS's cannot not predict the outcome of any litigation by the non-Vermont Sponsors. Deehan pf. of 2/11/09 at 13, fn. 1.

Discussion

As discussed in Section III(B), above, ENVY has the burden of satisfying the requirements of § 248(b)(4) by providing sufficient net benefits. The RSC clearly has benefits as an insurance policy, but the amount of such benefits is difficult to predict, and the Vermont share of benefits is also in doubt. The inability to establish a specific value to this benefit, however, does not mean the benefit should not be taken into account. "Quantification of these risks is difficult. The difficulty of reducing the risk transfer benefit to a numeric value, however, does not mean that the benefits are not real." Docket No. 6545, Order entered 6/13/2002 at p. 30 (discussing the value of the reduction in risk to Vermont resulting from the sale to Entergy).

Accordingly, CVPS recommends that the RSC forecasted, but essentially unquantifiable, benefits should definitely be included in the overall benefits supporting a finding of public good, but those benefits should be counterbalanced with the uncertainty of any actual cash distribution and the risk that Vermont will recognize only 55% of any such cash distribution.

IV. CVPS and GMP do not oppose sharing RSC revenues with other Vermont utilities if such sharing is (i) not unduly disadvantageous to their ratepayers, is supported by the DPS, and (iii) garners broader support for relicensing

A. Although Vermont law does not provide for sharing with other utilities, CVPS and GMP do not oppose sharing RSC revenues with reasonable conditions

Proposed Findings

79. VEC seeks to have the Board "condition its [relicensing] approval on an extension of the benefits of the revenue sharing provision to all Vermont electric utility ratepayers." VEC also states in a footnote to this sentence that it "understands that [CVPS and GMP] are generally in agreement with this position." Pratt pf. of 2/11/09 at 2 and fn. 3.

80. The RSC was negotiated between the DPS and ENVY, and at the time was not expected to have likely value. Deehan pf. of 2/11/09 at 15. The Board, in its 6/13/02 Order in Docket No. 6545, at fn. 142, stated:

> We note that the $61 strike price is higher than the prices that any party has forecast for wholesale market power in 2012 (for example, it is approximately 10 percent above the DPS 2001 forecast that we find represents one end of the reasonable range of price projections). *See* Finding 52. Thus, based upon present projections, this sharing provision is not likely to have any value to ratepayers. Nonetheless, it does provide protection should energy market prices change precipitously.

81. Under the current MOU structure, ENVY would send to VYNPC the requisite share of unit excess revenues. *See*, Finding 55, above. VYNPC would then forward shares of these funds to the recipients: CVPS, GMP and CMP, as owners; CVPS, GMP and prior owners/Sponsors/power purchasers; or CVPS and GMP, for the benefit of Vermont ratepayers. Deehan pf. of 2/11/09 at 16. *See*, Finding 71, above

82. CVPS and GMP are the sole Vermont recipients of any VYNPC distribution (a 55% share, 92.5% share or 100% share). Deehan pf. of 2/11/09 at 16.

83. CVPS agrees that any benefits it receives through the RSC will be applied to the benefit of ratepayers. Deehan pf. of 2/11/09 at 11. CVPS believes the first use of RSC revenues ought to be to reduce otherwise increasing electric rates. Tr. 6/2/2009 at p. 119, ll. 1-4 (Deehan).

84. CVPS is willing to offer to share a portion of the revenues CVPS receives through the RSC, providing such sharing is equitable and supported by the Department. Deehan pf. of 2/11/09 at 15.

85. CVPS proposes reserving an appropriate portion of the Vermont funds received to be allocated in a fair and equitable way among the Vermont utilities that agree with the sharing proposal and support relicensing of the plant. CVPS believes that in the interest of gathering support for relicensing, appropriately conditioned on satisfactory safety and reliability review of the plant, the Vermont utilities who wish to participate and support relicensing should receive a benefit for their customers. Deehan pf. of 2/11/09 at 16.

86. CVPS sees the value of sharing RSA revenues with other Vermont utilities as a method for gathering support for relicensing from the willing distribution utilities. Tr. 6/2/2009 at p. 107, ll. 15-20 (Deehan). By "garnering support," CVPS means gathering support in the Legislature. Tr. 6/2/2009 at p. 142, l. 21 – p. 143, l. 4 (Deehan).

87. GMP does not object to a sharing of RSA revenues with a broader group of utilities if it was deemed appropriate by the Department of Public Service. GMP believes that sharing could support relicensing, because there would be benefits that went to a broader number of Vermonters. Tr. 6/1/09 at p. 17, ll. 9-20 (Powell). Sharing of the RSA revenues potentially contributes to the first and most important point, which is getting support for the plant to be relicensed. Tr. 6/1/09 at p. 19, ll. 7-11 (Powell).

88. "Our good lawyers are working on documents that would describe what 'supporting relicensing' would look like." Tr. 6/1/09 at p. 22, ll. 4-10 (Powell). (*But, cf.*, "The 'good lawyers.' That's not an expression you hear very often." Tr. 6/1/09 at p. 22, ll. 12, 13 (Volz).

89. Sharing of the RSA revenues should not unfairly disadvantage CVPS's or GMP's ratepayers. The most significant harm to CVPS's and GMP's customers would be by not having Vermont Yankee power available to them in the future. If that premise is accepted, the most important thing for ratepayers is to see the plant relicensed, if deemed safe and reliable. The carbon attributes and the cost attributes of Vermont Yankee are important to the energy future of ratepayers. Tr. 6/1/09 at p. 18, l. 17 – p. 19, l. 1 (Powell).

90. CVPS is concerned about giving away funds that were intended for CVPS ratepayers and accrued to those ratepayers because of a risk CVPS took that paid off. CVPS is concerned because, as a general matter, unless there is some reason to give up those funds, the direct effect on our customers is a negative. Tr. 6/2/2009 at p. 139, ll. 8-19 (Deehan). The indirect effect is that if wider sharing garners support in the Legislature, it makes it more likely that the plant will operate, and that will be a net benefit to our customers. Tr. 6/2/2009 at p. 136, ll10-24 (Deehan). There is a balancing between not having the Vermont Yankee plant at all because there is not enough public good and creating enough public good to get the plant relicensed. Tr. 6/1/09 at p. 19, l. 1 – p. 20, l. 48 (Powell).

91. CVPS's expectation is that the way this broader sharing is going to come about is through talks and negotiations between the utilities, and not by the Board by fiat ordering CVPS and GMP to do one thing or the other. Tr. 6/2/2009 at p. 136, l. 25 – p. 137, l. 5 (Deehan). While CVPS agrees that a mechanism to provide benefits to all Vermont electric consumers is

reasonable, no specific structure or formula has yet been determined. Deehan pf. of 2/11/09 at 16, 17.

92. CVPS is not asking for, and does not support, the Board imposing a sharing of the RSA revenues on the parties. If CVPS and GMP cannot reach an agreement with the other utilities and the DPS, CVPS believes that is where it should end. Tr. 6/2/2009 at p. 108, l. 8 – p. 109, l. 10 (Deehan).

93. The DPS disagrees with VEC, and with CV and GMP to some extent, that there may be a basis for sharing the revenue sharing benefits a little more broadly. Tr. 6/3/2009 at p. 80, ll 16-22 (Lamont). The DPS position is that those RSA funds should go primarily to GMP and CVPS. So if there was a sharing, the DPS would apply a fairly high bar to how that follows the original allocation of those funds. Tr. 6/3/2009 at p. 139, ll. 9-13 (Lamont).

94. The DPS cannot find a solution to that that is consistent with traditional rate making principles, and so the DPS position is that these benefits should stay with the owners of VYNPC. Tr. 6/3/2009 at p. 78, ll. 12-24 (Lamont). Under traditional rate making principles, the costs and benefits of a power contracting arrangement would flow to those utilities that made that arrangement. Tr. 6/3/2009 at p. 131, ll 12-21 (Lamont).

95. The RSA was part of the original deal which included the PPA as well as the sale price and the other attributes. All the PPA entities that continue to buy power under PPAs [as part of the original transaction] with VYNPC are bearing the operating costs of VYNPC as part of the charges for which they are responsible. Tr. 6/2/2009 at p. 105, ll. 10-14 (Deehan). Even though the RSA benefits are in the future, the genesis of the agreement and of the RSA was part of the original transaction. Tr. 6/3/2009 at p. 78, ll. 12-24 (Lamont).

96. It is not inconsistent with the DPS's historical role in any proceeding to look to individual utilities or to advocate for individual utilities in any specific case. Tr. 6/3/2009 at p. 80, ll. 8-11 (Lamont).

97. The DPS is not unalterably opposed to some form of sharing of the revenue sharing agreement. The DPS would consider something that was brought forth by the utilities, but it would be a fairly high bar as a result of the DPS's considerations at the time the Dkt. 6545 MOU was drafted. Tr. 6/3/2009 at p.138, ll. 5-11 (Lamont).

Discussion

First, CVPS does *not* agree with VEC that CVPS or GMP "are generally in agreement with the position" that the Board should "condition its [relicensing] approval on an extension of the benefits of the revenue sharing provision to all Vermont electric utility ratepayers." Findings 79, 92, above. CVPS only supports a broader sharing if:

(1) providing such sharing is equitable and supported by the Department (Finding 84, above);
(2) an "appropriate portion" (not load share) of the RSC revenues is allocated among the Vermont utilities that agree with the sharing proposal and support relicensing of the plant (Finding 85, above);
(3) sharing garners Legislative support (Finding 86, above);
(4) sharing of the RSA revenues does not unfairly disadvantage CVPS's or GMP's ratepayers (Finding 89, above); and
(5) any broader sharing is determined through negotiations among the utilities, and not by the Board by fiat conditioning relicensing approval (Finding 91, above).

CVPS opposes the condition VEC proposes, and requests that the Board consider a broader sharing to other utilities only if it is proposed, most likely through an MOU filed with the Board, by CVPS and GMP, with DPS concurrence. [9]

[9] Please note CVPS is not arguing that the Board does not have the *authority* to direct and control the CVPS's use of these "above-the-line" RSC revenues, if any, received by CVPS. CVPS is simply stating here that VEC's instant proposal to condition relicensing on a redistribution of contract benefits from a contracting utility (CVPS) to a non-contracting utility (VEC and others) is unsupported by Board precedent.

Regarding the more general argument by VEC that fairness requires such a condition, CVPS agrees with the DPS that an allocation of the RSA revenues to the other utilities would not be consistent with traditional rate making principles because, under traditional rate making principles, the costs and benefits of a power contracting arrangement would flow to those utilities that made that arrangement. Finding 94, above. The RSA was part of the original sale agreement which included the PPA as well as the sale price and other risks and benefits. All the PPA entities that continue to buy power under PPAs [as part of the original transaction] with VYNPC are bearing the operating costs of VYNPC as part of the charges for which they are responsible. Finding 95, above.

The Board recognized in the sale docket that CVPS and GMP were assuming the risk that the post-sale PPA with ENVY could result in above-market rates, and the size of the PPA purchases would reduce CVPS's and GMP's respective abilities to participate in the energy market and reduce reliance on long-term, fixed price contracts. The Board also found that the low market adjuster and initial purchase price from ENVY mitigated the risks of the PPA being above-market. Docket No. 6545, Order entered 6/13/2002 at 84, 85.

Absent in the Docket No. 6545 Order is any finding that VYNPC's former minority owners, or any other Vermont utilities' ratepayers, would share with CVPS and GMP either the risks or benefits resulting from: the PPA; the Dkt. 6545 MOU; the VYNPC sale agreement with ENVY; or the Order approving the sale. We can find no Board precedent supporting VEC's position, where the Board distributed across the state contract *benefits* received by one utility, while requiring the single utility to bear the *risks or costs* of the contract (or, conversely, where a utility's contract risks or costs were shared across the state while the utility retained the benefits).

While no Board precedent supports VEC's position, VEC's arguments are directly refuted by Vermont precedent, where the Board found that direct contract benefits received by a utility are to be applied for the benefit of that utility's customers, rather than all Vermont ratepayers. First, in the sale docket, the Board recognized that various post-sale revenues would be received by VYNPC through the Purchase and Sale Agreement with ENVY, and therefore would also ultimately be received by CVPS and GMP. The Board did not find that those revenues should be shared state-wide, as VEC proposes. Rather, the Board found that the benefits of these future funds flow to CVPS's and GMP's customers. The Board stated:

> We also note that there is a meaningful chance that Vermont utilities will receive *future funds* — that they are not currently relying upon — as a result of distributions from (1) Nuclear Electric Insurance Limited, (2) excess funds in the Spent Fuel Disposal Trust, or (3) claims related to the Department of Energy's defaults under the DOE Standard Contract under Section 2.2(i) of the Sale Agreement. Today's Order requires *Central Vermont and Green Mountain*, upon the receipts of funds from any of those sources, to propose a plan for their distribution *for the benefit of their customers*, with specific consideration to applying a significant portion of these benefits towards the development and use of renewable resources.
>
> Docket No. 6545, Order entered 6/13/2002 at p. 153 (emphasis added).

Of particular interest in the above Board requirement is the fact that the subject revenues to be received by CVPS and GMP discussed therein – from NEIL, the Spent Fuel Disposal Trust, and DOE contract - are refund payments resulting from insurance premiums, trust fund deposits and claims against the DOE that had been funded by the *pre-sale owners and sponsors of VYNPC* (including, indirectly, VEC and the other minority owners).[10] The Board did not require that those revenues be distributed for the benefit of the all Vermont ratepayers or the ratepayers of the prior VYNPC owners; rather, the post-sale benefits accrued to the ratepayers of the Vermont owners and power purchasers *existing post-sale, at the time of the receipt of the*

[10] See footnote 15, below, discussing that VEC did not purchase power directly from VYNPC.

revenues. Since VEC and the other prior Vermont owners did not fund in any way the basis for the post-2012 RSC revenues (which basis is the unit revenues received by ENVY), they have even less claim to the RSC revenues than the post-sale revenues the Board found should be returned to CVPS's and GMP's ratepayers.

Second, contrary to VEC's position is Vermont precedent providing that while a project may support the economic benefit and public good of the State, the direct benefits accruing to the specific contracting utility were not distributed across the state to satisfy the § 248(b)(4) criteria. In Docket No. 7154, the Board found that a power project "will result in an economic benefit to the state and its residents" and that "VEC [the contracting utility] would benefit from savings in power costs. ... Thus, this project provides clear financial benefits for VEC.." Docket No. 7154, Order entered 5/12/2006 at pp. 10, 11. Applying that reasoning to this case, the instant "project" (Vermont Yankee relicensing) "will result in an economic benefit to the state and its residents,"[11] and the project revenue will "provide clear financial benefits for [CVPS and GMP]," and, applying the result in Docket No. 7154, the benefits to GMP and CVPS are not required to be distributed to others for benefit of the state.

Third, VEC, and the other "public power" entities referenced by Mr. Pratt (Pratt pf. of 2/11/09 at fn. 2) have longstanding access to taxpayer-subsidized financing, taxpayer subsidized power, and other benefits that inure directly to public power ratepayers; however, we were unable to find any instance, or Board order, where VEC offered, or was required, to share such savings with the ratepayers of CVPS and GMP.

While VEC in this instant docket "seeks an equitable sharing of any RSA money as a way to ensure a level playing field for all Vermont residents, utilities and businesses," Pratt pf. of

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[11] This argument is not intended to imply that CVPS believes ENVY *has* met this burden under § 248(b)(4).

2/11/09 at 8, VEC has never taken this position before the Board when its *own* contract benefits were at stake.[12] *See also*, Finding 104, below.

Finally, CVPS and GMP are in discussions with other utilities, and if a sharing MOU can be achieved with the support of the DPS, CVPS and GMP will file such MOU with the Board for consideration. Findings 91, 92, above.

Accordingly, while CVPS and GMP are willing to voluntarily provide some sharing of the RSC revenues in order to garner broader support in the Legislature and from non-CVPS or GMP ratepayers, the Board should refrain from accepting VEC's "fairness" argument and requiring such a sharing.

B. RSC revenues should not be used for energy efficiency and renewable generation efforts

Proposed Findings

98. CVPS's primary reason for not supporting RSA revenues funding energy efficiency and renewable generation efforts is because the revenue sharing clause is really an insurance instrument. By construction, it will yield the most money when market prices are the highest, and CVPS expects to have some open positions requiring purchases that are based on short term market prices, because CVPS does not have the financial wherewithal to find enough counterparties who will offer a long term contract under credit terms that CVPS can bear. Tr. 6/2/2009 at p. 117, l. 21 – p. 118, l. 10 (Deehan).

99. While CVPS believes the proposal to use RSA revenues for energy efficiency and renewable generation efforts to benefit the state's ratepayers is not unreasonable, CVPS does not support this use because the State already has mechanisms to promote those two topics. The state

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[12] "The [VEC] doth protest too much, methinks." Wm. Shakespeare, *Hamlet*, Act 3, scene 2, l. 230.

has the energy efficiency charge which funds the EEU's efforts in Vermont, so Vermont has made a decision on a mechanism that works. Because the RSA revenues will be somewhat choppy, the energy efficiency charge is a much better way to fund the energy efficiency program. In terms of renewables, there are a number of efforts in Vermont. The House has just passed a new law that will promote renewables of a certain description. The State has the SPEED law that promotes renewables. Tr. 6/2/2009 at p. 116, l. 8 – p. 117, l. 19 (Deehan).

100. Regarding energy efficiency expenditures and whether RSA revenue should fund these activities, Vermont has a process to set budgets for energy efficiency, in a way that is designed to capture all cost effective energy efficiency over a reasonable period of time, taking into account rate effects, the ability of the efficiency utility and others to wrap up services and other things that affect the ability to deliver demand side services; that is the appropriate arena to do that activity. Tr. 6/3/2009 at p. 83, ll. 11-22 (Lamont).

Discussion

As discussed in Section IV(A), above, the Board has not required that benefits received by one utility though a contract are to be distributed among other utilities or to Vermont ratepayers in general. However, as provided in the Docket No. 6545 Order, the Board has required that such contract benefits may be specifically assigned *for the benefit of [the contracting utilities'] customers*, with specific consideration to applying a significant portion of these benefits towards the development and use of renewable resources." Docket No. 6545, Order entered 6/13/2002 at p. 153 (emphasis added).

While CVPS does not support the Conservation Law Foundation's and the Vermont Public Interest Research Group's proposals to mandate that RSC revenues be allocated to renewables and energy efficiency, CVPS does not object to reviewing with the Board and DPS

(and others, if the Board deems appropriate) the application of any RSC revenues it receives to CVPS rate reductions (CVPS's preferred choice) or to a mix of CVPS customer benefits that can include rate reductions, support for renewables and energy efficiency, and other beneficial uses.

C. The Board should not order statewide RSC revenue sharing based upon the misleading and revisionist history proferred by VEC

Proposed Findings

101. VEC seeks to have the Board order a sharing of RSC revenues to VEC because VEC was "forced" to sell its shares of VYNPC and that the negotiations "for an MOU and a revenue sharing agreement for a possible license extension was [sic] not known to VEC at the time of the release of the shares so it would not have been a basis for considering whether to hold onto the [VYNPC] stock." VEC claims it "had little choice in this particular situation." LaCapra pf. of 2/11/2009 at 6.

102. VEC's advances a position that CVPS and GMP improperly forced or wrongly induced VEC to sell its shares of stock in VYNPC with testimony or questions such as: VEC "ceased holding [VYNPC] stock only when they were *confronted* with their owner benefits expiring" (LaCapra pf. of 2/11/2009 at 6 (emphasis added)); "The negotiations for an MOU and a revenue sharing agreement ... was [sic] not known to VEC at the time of the release of the shares ..." (LaCapra pf. of 2/11/09 at 6); "...did the Department consider applying those enhancements to *the people that had been forced out...*" (Tr. 6/2/2009 at p. 135, ll. 7, 8 (Burak) (emphasis added)); "...you don't know whether they were forced out or not?" (Tr. 6/3/2009 at 135, ll. 11, 12 (Burak) (emphasis added)); "The VEC had little choice..." (LaCapra pf. of 2/11/09 at 6); "Did they exit the proceeding *after they were forced out*?" (Tr. 6/3/2009 at p. 135, ll. 19, 20 (Burak)(emphasis added)).

103. VEC is requesting that the Board endorse the concept that the RSA revenue is a benefit that should be treated as a general statewide benefit and send it back basically to the parties to hammer out what they think is fair. Tr. 6/1/2009 at p. 456, ll. 12-16 (LaCapra).

104. VEC's proposal is one-sided. If VEC enters into a favorable below market contract with a merchant generator (for example, a wind project on a Vermont ridgeline), VEC should not share the benefits of that contract with other the Vermont utilities. Tr. 6/1/2009 at p. 56, ll. 9-15 (LaCapra). If the favorable PPA that VEC has with this wind project is below market – the market is $50 and VEC is buying it at $40, VEC should not share that $10 margin of savings. Tr. 6/1/2009 at p. 56, l. 25 – p. 57, l. 4 (LaCapra).

105. VEC went through a bankruptcy where it needed to discharge the contracts it held with the generation and transmission company. The [G&T company] held all the generating assets with the exception of some non-utility generation. One of the conditions, in part self imposed to get an investment grade rating, was that VEC exit the generation business completely, so rejecting the VYNPC PPA was not an economic decision about Vermont Yankee. This was an economic decision of how to return a company in Chapter 11 to solvency with an investment grade rating. Tr. 6/1/2009 at p. 42, ll. 3-17 (LaCapra). VEC had to get rid of the VYNPC PPA as a power supply source. ... VEC had to reject the power contract. Tr. 6/1/2009 at p. 42, ll. 3-17 (LaCapra).[13]

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[13] Of course, by keeping its VYNPC shares, VEC was remaining an owner of VYNPC, which is the opposite of "exiting the generation business," as Mr. LaCapra says VEC was *required* to do.

Actually, Mr. LaCapra's statements "rejecting the VYNPC PPA was not an economic decision" and "had to get rid of the VYNPC PPA" are not true assertions for a utility in bankruptcy. Under bankruptcy law, rejections of contracts *are solely* economic decisions. As Mr. LaCapra acknowledged, "VEC didn't sell its interest in the purchased power contract; it rejected it. Tr. 6/1/2009 at p. 58, ll. 7-9 (LaCapra).

"Reject" is a term of art in bankruptcy proceedings. Trustees/Debtors-in-possession ("DIP") are permitted to reject economically unfavorable contracts and retain economically favorable ones. The Bankrupcy Code at 11 U.S.C. § 365 permits the Trustee/ DIP to reject executory contracts (such as the PPA between VEC and VELCO for

106. VEC retained its shares in VYNPC until 2002. And then it gave them up. Tr. 6/1/2009 at p. 43, ll. 12-22 (LaCapra). When the sale of the plant to Entergy was underway, VEC, WEC, BED and LED, who held minority interests in the plant, exercised their dissenter's rights to have their shares redeemed by the VYNPC. LaCapra pf, of 2/11/2009 at p. 2.

107. VEC was paid for its shares of VYNPC. Tr. 6/1/2009 at p.56, ll. 4-6 (LaCapra).

108. When the VYNPC corporation sold the plant, it was still the same corporation. The shareholders still received dividends on their shares. Tr. 6/1/2009 at p. 60, ll. 11-22 (LaCapra). At the time VEC gave up the VYNPC stock, the stock was actually providing an economic benefit in fact ... something in the vicinity of $8,000 a year. The benefit was always positive. Tr. 6/1/2009 at p. 59, ll. 8-16 (LaCapra).

109. When VEC sold its VYNPC stock, it voluntarily gave up a benefit that it otherwise would have received. It gave up the dividends on the shares. Tr. 6/1/2009 at p. 60, l. 23 – p. 61, l. 1 (LaCapra).

110. VEC sold its interest when it believed it was in VEC's best interest. It was a rational decision for VEC. Tr. 6/1/2009 at p. 61, ll. 3-9 (LaCapra). It was voluntarily VEC's choice to sell the stock back to VYNPC. VEC was not forced to sell. Tr. 6/1/2009 at p. 62, ll. 14-17 (LaCapra). In their best interest VEC decided they would rather get out of VYNPC than receive an $8,000 a year dividend. Tr. 6/1/2009 at p. 62, ll. 20-23 (LaCapra).[14]

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the purchase of VY power – *see*, fn. 15, below) when the contract is not economically favorable to the debtor. It also allows the Trustee/DIP to retain an executory contract when the terms are economically favorable to the debtor.

See, e.g., Mirant Corp. v. Potomac Electric Power Co. (In re Mirant Corp.), 378 F.3d 511 (5th Cir. 2004)(the court specifically upheld the right of a bankrupt utility to reject an economically unfavorable power contract in order to free the utility from its unfavorable, above-market prices). VEC's circumstances were the same: it rejected the VYNPC PPA as an economic decision because the price was unfavorable at the time.

[14] If Mr. LaCapra was given a choice of receiving $8,000 or not, he would probably accept receiving $8,000. Tr. 6/1/2009 at p. 63, ll. 23-25 (LaCapra).

111. When VEC sold its stock in VYNPC, it was not confronted by the other VYNPC owners. Tr. 6/1/2009 at p. 64, ll. 11-13 (LaCapra).

112. VEC saw no value in the VYNPC shares so they did an assessment and said 'well these benefits that we have here are expiring, there is an offer to take the shares for some value...' VEC requested to sell the shares. Tr. 6/1/2009 at p. 64, l. 20 – p. 65, l. 1 (LaCapra). Essentially VEC was looking to sell its asset. Tr. 6/1/2009 at p. 67, 42, ll. 19-20 (LaCapra).

113. The dissenters [the monitory owners] concluded that the proposed transaction was not in their interest. Tr. 6/3/2009 at p. 134, ll. 10-13 (Lamont). Based upon the testimony of Mr. LaCapra, the DPS does not believe VEC was required to sell its ownership shares in VYNPC as a result of its decision to no longer purchase power output from the plant. Tr. 6/3/2009 at p. 141, ll. 13-17 (Lamont).

114. The Dkt. 6545 MOU was a public document. The DPS is not aware of the minority parties going to the DPS at the time of the sale and stating they would like back into the sale transaction and MOU. Tr. 6/3/2009 at p.139, l. 22 – p. 140, l. 6 (Lamont).

115. The DPS is not aware of the minority parties contacting the DPS during the hearings regarding the MOU and the issues in it. The DPS is not aware of the minority parties contacting the Board when it issued its order in Docket 6545 and saying they were treated unfairly. The minority owners filed no motion for reconsideration when it issued its order in Docket 6545. Tr. 6/3/2009 at p. 140, ll. 7-18 (Lamont).

116. If the dissenters [the monitory owners] were forced out of VYNPC, once they saw the nature of the contract [Dkt 6545 MOU], they probably could have come to the Department and said 'hey, we want back in, and we were unfairly forced out,' and the DPS we would have listened to that. Tr. 6/3/2009 at p. 135, ll. 13-18 (Lamont). Until very recently, the DPS was

unaware of any request of these minority owners to have the Board or Department look at the fairness of the arrangement that was reached in 2002. Tr. 6/3/2009 at p. 140, ll. 119-23 (Lamont).

117. Current market conditions, however, are drastically different than those presumed at the time of the VEC stock sale settlement discussion and final Dkt. 6545 MOU. LaCapra pf. of 2/11/2009 at p. 3.

118. If VEC had remained a shareholder of VYNPC, it would expect to see a shareholder's share of excess revenues distributed by VYNPC. Tr. 6/1/2009 at p. 71, ll. 2-10 (LaCapra).

Discussion

VEC has no right or entitlement to RSC revenues because, in retrospect, it made ill-advised decisions

Simply stated, VEC's argument that it is entitled to RSC revenues because it was tricked or forced into selling its VYNPC shares is a sham and should be rejected. Hearing Officer Janson and Board Member Burke effectively summarized the speciousness of VEC's argument:

> MR. JANSON: Couldn't somebody say that VEC sold its interest in Vermont Yankee when that appeared to be in VEC's best interest, but now in hindsight it looks like it might have been a mistake so VEC wants back in?

Tr. 6/2/2009 at p. 41, ll. 17-21.

> BOARD MEMBER BURKE: Mr. LaCapra, I would like to go one step further than Mr. Janson's question. Is it possible that the cynic might view the VEC position as we want back in and would like to reverse the decision we made before. We want to use statewide risk as a proxy to get back in, and those people that sort of use the argument we used before when we got out should be disenfranchised from the benefits.
> Couldn't somebody say that VEC sold its interest in Vermont Yankee when that appeared to be in VEC's best interest, but now in hindsight it looks like it might have been a mistake so VEC wants back in?

Tr. 6/2/2009 at p. 44, l. 21 – p. 45, l. 5.